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Report of the Working Group

Chapter 3
Jurisdiction and admissibility

Section I
Declarations and referrals relating to articles 11, 12, 13 and 14

Rule 2.1
Declaration provided for in article 12, paragraph 3

1. The Registrar, at the request of the Prosecutor, may inquire of a State that is not a Party to the Statute or that has become a Party to the Statute after its entry into force, on a confidential basis, whether it intends to make the declaration provided for in article 12, paragraph 3.

2. When a State lodges, or declares to the Registrar its intent to lodge, a declaration with the Registrar pursuant to article 12, paragraph 3, or when the Registrar acts pursuant to sub-rule 1, the Registrar shall inform the State concerned that the declaration under article 12, paragraph 3, has as a consequence the acceptance of jurisdiction with respect to the crimes referred to in article 5 of relevance to the situation and the provisions of Part 9, and any rules thereunder concerning States Parties, shall apply.

Rule 2.2
Referral of a situation to the Prosecutor

A referral of a situation to the Prosecutor shall be in writing.

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Section II
Initiation of investigations under article 15

Rule 2.3
Information provided to the Prosecutor under article 15, paragraphs 1 and 2

Where information is submitted under article 15, paragraph 1, or where oral or written testimony is received pursuant to article 15, paragraph 2, at the seat of the Court, the Prosecutor shall protect the confidentiality of such information and testimony or take any other necessary measures, pursuant to his or her duties under the Statute.

Rule 2.4
Testimony under article 15, paragraph 2

1. The provisions of rules 5.9 and 5.10 shall apply, *mutatis mutandis*, to testimony received by the Prosecutor pursuant to article 15, paragraph 2.

2. When the Prosecutor considers that there is a serious risk that it might not be possible for the testimony to be taken subsequently, he or she may request the Pre-Trial Chamber to take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to appoint a counsel or a judge from the Pre-Trial Chamber to be present during the taking of the testimony in order to protect the rights of the defence. If the testimony is subsequently presented in the proceedings, its admissibility shall be governed by article 69, paragraph 4, and given such weight as determined by the relevant Chamber.

Rule 5.1
Determination of reasonable basis to proceed with an investigation under article 15, paragraph 3

In determining whether there is a reasonable basis to proceed with an investigation under article 15, paragraph 3, the Prosecutor shall consider the factors set out in article 53, paragraph 1 (a) to (c).

Rule 2.5
Decision and notice under article 15, paragraph 6

1. Where a decision under article 15, paragraph 6, is taken, the Prosecutor shall promptly ensure that notice is provided, including reasons for his or her decision, in a manner that prevents any danger to the safety, well-being and privacy of those who provided information to him or her under article 15, paragraphs 1 and 2, or the integrity of investigations or proceedings.

2. The notice shall also advise of the possibility of submitting further information regarding the same situation in the light of new facts and evidence.

Rule 2.6
Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation

1. When the Prosecutor intends to seek authorization from the Pre-Trial Chamber to initiate an investigation pursuant to article 15, paragraph 3, the Prosecutor shall inform victims, known to him or her or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses. In performing these functions, the Prosecutor may seek the assistance of the Victims and Witnesses Unit as appropriate.

2. A request for authorization by the Prosecutor shall be in writing.

3. Following information given in accordance with sub-rule 1, victims may make representations in writing to the Pre-Trial Chamber within such time limit as set forth in the Regulations.

4. The Pre-Trial Chamber, in deciding on the procedure to be followed, may request additional information from the Prosecutor and from any of the victims who have made representations, and, if it considers it appropriate, may hold a hearing.

5. The Pre-Trial Chamber shall issue its decision, including its reasons, as to whether to authorize the commencement of the investigation in accordance with article 15, paragraph 4, with respect to all or any part of the request by the Prosecutor. The Chamber shall give notice of the decision to victims who have made representations.

6. The above procedure shall also apply to a new request to the Pre-Trial Chamber pursuant to article 15, paragraph 5.

Section III
Challenges and preliminary rulings under articles 17, 18 and 19

Rule 2.7
Information provided under article 17

In considering the matters referred to in article 17, paragraph 2, and in the context of the circumstances of the case, the Court may consider, *inter alia*, information that the State referred to in article 17, paragraph 1, may choose to bring to the attention of the Court showing that its courts meet internationally recognized norms and standards for the independent and impartial prosecution of similar conduct, or that the State has confirmed in writing to the Prosecutor that the case is being investigated or prosecuted.

Rule 2.8
Notification provided for in article 18, paragraph 1

1. Subject to the limitations provided for in article 18, paragraph 1, the notification shall contain information about the acts that may constitute crimes referred to in article 5, relevant for the purposes of article 18, paragraph 2.

2. A State may request additional information from the Prosecutor to assist it in the application of article 18, paragraph 2. Such a request shall not affect the one-month time limit provided for in article 18, paragraph 2, and shall be responded to by the Prosecutor on an expedited basis.

Rule 2.9
Deferral provided for in article 18, paragraph 2

When a State requests a deferral pursuant to article 18, paragraph 2, that State shall make this request in writing and provide information concerning its investigation, taking into account article 18, paragraph 2. The Prosecutor may request additional information from that State.

Rule 2.10
Application by the Prosecutor under article 18, paragraph 2

1. An application submitted by the Prosecutor to the Pre-Trial Chamber in accordance with article 18, paragraph 2, shall be in writing and shall contain the basis for the application. The information provided by the State under rule 2.9 shall be communicated by the Prosecutor to the Pre-Trial Chamber.

2. The Prosecutor shall inform that State in writing when he or she makes an application to the Pre-Trial Chamber under article 18, paragraph 2, and shall include in the notice a summary of the basis of the application.

Rule 2.11
Proceedings concerning article 18, paragraph 2

1. The Pre-Trial Chamber shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing.

2. The Pre-Trial Chamber shall examine the Prosecutor's application and any observations submitted by a State that requested a deferral in accordance with article 18, paragraph 2, and shall consider the factors in article 17 in deciding whether to authorize an investigation.

3. The decision and the basis for the decision of the Pre-Trial Chamber shall be communicated as soon as possible to the Prosecutor and to the State that requested a deferral of an investigation.

Rule 2.12
Application by the Prosecutor following review under article 18, paragraph 3

1. Following a review by the Prosecutor as set forth in article 18, paragraph 3, the Prosecutor may apply to the Pre-Trial Chamber for authorization in accordance with article 18, paragraph 2. The application to the Pre-Trial Chamber shall be in writing and shall contain the basis for the application.

2. Any further information provided by the State under article 18, paragraph 5, shall be communicated by the Prosecutor to the Pre-Trial Chamber.

3. The proceedings shall be conducted in accordance with rules 2.10, sub-rule 2, and 2.11.

Rule 2.13
Provisional measures under article 18, paragraph 6

An application to the Pre-Trial Chamber by the Prosecutor in the circumstances provided for in article 18, paragraph 6, shall be considered ex parte and in camera. The Pre-Trial Chamber shall rule on the application on an expedited basis.

Rule 2.14
Proceedings under article 19

1. A request or application made under article 19 shall be in writing and contain the basis for it.

2. When a Chamber receives a request or application raising a challenge or question concerning its jurisdiction or the admissibility of a case in accordance with article 19, paragraph 2 or 3, or is acting on its own motion as provided for in article 19, paragraph 1, it shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing. It may join the challenge or question to a confirmation or a trial proceeding as long as this does not cause undue delay, and in this circumstance shall hear and decide on the challenge or question first.

3. The Court shall transmit a request or application received under sub-rule 2 to the Prosecutor and to the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons, and shall allow them to submit written observations to the request or application within a period of time determined by the Chamber.

4. The Court shall rule on any challenge or question of jurisdiction first and then on any challenge or question of admissibility.

Rule 2.15
Participation in proceedings under article 19, paragraph 3

1. For the purpose of article 19, paragraph 3, the Registrar shall inform the following of any question or challenge of jurisdiction or admissibility which has arisen pursuant to article 19, paragraphs 1, 2 and 3:

(a) Those who have referred a situation pursuant to article 13;

(b) The victims who have already communicated with the Court in relation to that case or their legal representatives.

2. The Registrar shall provide those referred to in sub-rule 1, in a manner consistent with the duty of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence, with a summary of the grounds on which the jurisdiction of the Court or the admissibility of the case has been challenged.

3. Those receiving the information, as provided for in sub-rule 1, may make representation in writing to the competent Chamber within such time limit as it considers appropriate.

4. The present rule is applicable to the procedures covered in rules 2.11 and 2.12 whenever an issue of jurisdiction or admissibility is involved.

Rule 2.16
Competent organ to receive challenges

If a challenge to the jurisdiction of the Court or to the admissibility of a case is made after a confirmation of the charges but before the constitution or designation of the Trial Chamber, it shall be addressed to the Presidency, which shall refer it to the Trial Chamber as soon as the latter is constituted or designated in accordance with rule 5.27.

Rule 2.17
Provisional measures under article 19, paragraph 8

When the Prosecutor makes application to the competent Chamber in the circumstances provided for in article 19, paragraph 8, rule 2.13 shall apply.

Rule 2.18
Proceedings under article 19, paragraph 10

1. If the Prosecutor makes a request under article 19, paragraph 10, he or she shall make the request to the Chamber that made the latest ruling on admissibility. The provisions of rules 2.14, 2.15 and 2.17 shall be applicable.

2. The State or States whose challenge to admissibility under article 19, paragraph 2, provoked the decision of inadmissibility provided for in article 19, paragraph 10, shall be notified of the request of the Prosecutor and shall be given a time limit within which to make representations.